

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 23-11

Date Received: December 2, 2022

Title: Non-AIP Grants, Cooperative Agreements, or Other Transaction Agreements
Administrative change

Initiator Name: Monica Rheinhardt

Initiator Organization Name / Routing Code: Procurement Policy Branch, AAP-110

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Policy and Guidance: (Please check only one box)

- | | |
|---|--|
| <input type="checkbox"/> Policy | <input type="checkbox"/> Procurement Tools and Resources |
| <input checked="" type="checkbox"/> Guidance | <input type="checkbox"/> Real Property Templates and Samples |
| <input type="checkbox"/> Procurement Samples | <input type="checkbox"/> Procurement Clauses |
| <input type="checkbox"/> Procurement Templates | <input type="checkbox"/> Real Property Clauses |
| <input type="checkbox"/> Procurement Forms | <input type="checkbox"/> Other Tools and Resources |
| <input type="checkbox"/> Procurement Checklists | |

Summary of Change:

Administrative change to clarify the Administrator's review as it pertains to any non-AIP grants, cooperative agreements, or other transaction agreements.

Reason for Change:

Administrative change to clarify the Administrator's review as it pertains to any non-AIP grants, cooperative agreements, or other transaction agreements.

Development, Review, and Concurrence: AAP-110

Target Audience: Acquisition Workforce.

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location: On <https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.1>.

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links: <https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.1.pdf>

Attachments: Redline and final documents.

Other Files: N/A.

Redline(s):

Section Revised: T3.8.1 – Agreements and Cooperative Agreements

Procurement Guidance - (~~10/2022~~1/2023)

[T3.8.1 Agreements and Cooperative Agreements](#) Revised 1/2022

[A Agreements and Cooperative Agreements](#) Revised 1/2022

[1 General Considerations](#) Revised ~~9/2022~~1/2023

[2 Inter-agency and Intra-agency Agreements](#) Revised 9/2022

[3 Other Transaction Agreements](#) Revised 9/2022

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[C Procurement Forms](#) Revised 9/2021

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[G Appendix](#) Revised 9/2021

[1 Attachment 1 - Parallel Authorities](#)

T3.8.1 Agreements and Cooperative Agreements Revised 1/2022

A Agreements and Cooperative Agreements Revised 1/2022

1 General Considerations Revised 9/20221/2023

a. *Applicability.*

- (1) This section applies to inter-agency and intra-agency agreements, other transaction agreements, cooperative agreements, and international agreements for services, supplies (including construction) and real property to the extent authorized by law.

This section **does not** apply to procurement contracts, grants, and agreements governed by:

- (a) Airport Improvement (AIP) Grants authorized under 49 U.S.C. 47101 et seq. are covered in FAA Order 5100.38A, AIP Handbook, October 24, 1989; and
- (b) Cooperative Research and Development Agreements (CRDA) authorized under 15 U.S.C. 3710a et seq. are covered under FAA Order 9550.6A "Technology Transfer Program".
- (c) This section does not apply to settlement agreements approved by appropriate counsel in the Chief Counsel's Office, agreements related to personnel matters, agreements related to compliance with FAA regulations or air traffic agreements related to operational matters in which no funds will be obligated or received.

- (2) Agreements are classified into five general categories (types) as follows:

- (a) Inter-agency Agreements;
- (b) Intra-agency Agreements;
- (c) Other Transaction Agreements (OTAs);
- (d) Cooperative Agreements; and
- (e) International Agreements.

For additional information in determining which agreement type is the most suitable to accomplish the FAA's mission, please refer to the Agreement Type Guidelines document in FAA FAST References.

b. *Authority.*

(1) The Administrator may enter into agreements:

(a) With or without reimbursement; and

(b) With another Federal agency or instrumentality of the Federal government, a modal administration within the Department of Transportation, a state, local government, municipality, or other public entity, foreign governments, and private entities.

(2) The Administrator has authority to enter into contracts, leases, grants, inter and intra-agency agreements, cooperative agreements, international agreements, and other transactions. Except for Airport Improvement Grants (AIP), the Administrator has delegated authority for managing these functions to the FAA Acquisition Executive (FAE). Based on the Administrator's delegation, the FAE has authority to appoint, and redelegate authority to, the Chief(s) of the Contracting Office (COCO), Contracting Officers (CO) and qualified non-contracting personnel. Please refer to the Nomination for Delegation of Limited Authority in Procurement Templates for further information.

(3) Each agreement must cite an applicable authority for entering into the agreement. The following is a non-exclusive list of authorities that may be cited:

(a) *General Authority.* 49 U.S.C. 106(l)(6) and/or 106(m) should be cited as general authority for all agreements, except where a DOD exception applies, or where the agreement is with a foreign government to provide technical assistance, or as noted below. In Sections 49 U.S.C. 106(l)(6) and 106(m), Congress provided FAA with specific authority to "enter into and perform such contracts, leases, cooperative agreements or other transactions agreements as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate." Section 106(m) also clarifies that FAA may use or accept the services, equipment, personnel, and facilities of another Federal agency, as well as a private or public entity and may do so with or without reimbursement. Additionally Section 106(m) provides specific authority to the head of another Federal agency to make the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. Additionally, the head of another Federal agency is authorized, notwithstanding any other provision of law, to transfer to, or receive from the FAA non-administrative supplies or equipment without reimbursement.

- (b) *Economy Act* – see T3.8.1A.2.e (1) (c)(iv) *Additional Authority under the Economy Act* below.
- (c) *Franchise Fund Agreements for Products/Services*. For franchise fund agreements the legal authority is 49 U.S.C. 40113(c).
- (d) *Joint Activities with DOD*. For joint activities between DOD and FAA the legal authority in 49 U.S.C. 40121(c)(2) may also be used.
- (e) *Technical Assistance Agreements with Foreign Governments*. For technical assistance agreements with foreign governments described at T3.8.1.A.5.a, the legal authority is 49 U.S.C. 40113(e).
- (f) *Parallel Authorities*. The FAA contains other specific program authorities applicable to certain types of agreements, which may be cited as parallel authority where appropriate. Legal counsel should be consulted for additional guidance in selecting any of the listed authorities (See Appendix Attachment 1, *Parallel Authorities*).

c. *Format of Agreements*

The format of an agreement is, in part, dependent upon whether one or more parties to the agreement is a federal agency and whether the agreement provides for the transfer of funds between the parties. Depending on the type of agreement, the FAA may use its own template, or may be required to use another entity's template. Specific format requirements for each agreement type are included in each of the respective T3.8.1 subsections below.

d. *Agreement Content*.

(1) *General*. All agreements must be in writing and at a minimum contain the following:

- (a) A clear statement of requirements or the purpose of the agreement and a description of the responsibilities of each party;
- (b) The term of the agreement;
- (c) Procedure for modifications;
- (d) The legal authority for the agreement;
- (e) A fund citation and payment provision, if appropriate, or a description of in-kind contribution of both parties;

- (f) Other terms and conditions, as appropriate, addressing matters such as intellectual property and indemnification, and restoration and disposition of Government property; and
- (g) Any additional specific agreement requirements described in the respective subsections below.

(2) *Suspension/Termination and dispute resolution provisions.* In addition to the above general requirements, all agreements must also include suspension, termination and dispute resolution provisions. For inter-agency and intra-agency agreements, the dispute resolution provision must specify that disputes must be resolved in accordance with the instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 5 (Overall Intra-governmental Transactions (IGT) Processes and General Information); for agreements with non-federal entities, where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute may be resolved by the FAA Administrator, or designee whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (See e.g. 49 U.S.C. 46110).

For Franchise agreements the following termination clause language should be used, where feasible:

Written notification of termination is required. In addition to any other termination rights provided by this agreement, either party may terminate this agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party other than payment of amounts due and owing and performance of obligations accrued.

Payment of amounts due and owing may include all costs reimbursable under this Agreement, not previously paid, for the performance of this Agreement before the effective date of the termination; the total cost of terminating and settling contracts entered into by the FAA for the purpose of the Agreement; and any other costs necessary to terminate this Agreement.

Upon receipt of a written notice of termination, the receiving party will take immediate steps to stop the accrual of any additional obligations, which might require payment. All funds due after termination will be netted against the advance payment and appropriate accounting actions will be taken to officially terminate services.

The time required to terminate a Requesting Agency (Buyer) from [Servicing Organization (Seller)] systems and services may be up to 18 months and will be determined based on the negotiated requirements of both the [Requesting Agency (Buyer)] and [Servicing Agency (Seller)]

Note: The appropriate length of time for notification of termination must be evaluated based on the requirements of each individual agreement.

- e. *Rational Basis.* The requesting service organization must document its rational basis for an

agreement by describing the technical, program, or business reasons for the agreement. If the agreement is an OTA, the rationale must also include a rationale for using an OTA over other types of agreements, i.e. procurement contracts, grants, cooperative agreements, inter-agency agreements, or intra-agency agreements. The CO, acting within the warrant authority commensurate with the total estimated dollar value of the requirement, must provide their concurrence to the written rationale.

- f. *Coordination Requirements.* For agreements subject to G-invoicing, the coordination requirements, if applicable, must occur prior to the GT&C being entered into G-invoicing.

(1) NAS Data Defense Programs and Chair of NAS Data Release Board Approval.

All agreements involving access to National Airspace System (NAS) data require additional coordination and approval prior to award. Access to NAS data includes, but is not limited to, connections to the NAS infrastructure and provision of recorded NAS data.

Agreements with federal agencies or state or local law enforcement agencies involving access to NAS data must be coordinated with NAS Defense Programs (AJW-B7) (See <https://my.faa.gov/org/linebusiness/ato/operations/naseo.html> (FAA Only)). All other agreements involving access to NAS data must be approved by the Chair of the NAS Data Release Board (email address 9-AFN-ACQ-EM@faa.gov) in accordance with FAA Order 1200.22E, External Requests for National Airspace System (NAS) Data.

All agreements involving access to NAS data also require a FAA-sponsored NAS Change Proposal (NCP) approved by the NAS Configuration Control Board (CCB) prior to award. The NAS NCP must address any necessary connections to the NAS infrastructure and applicable provisions to record and collect NAS data. The process of obtaining approval of the NAS NCP can be in parallel with the coordination or approval requirements indicated in the previous paragraph as long as all are met prior to award of the agreement.

(2) Budget and Performance Management (ABP-255). Franchise inter and intra-agency agreements require review by the AMC Resource Management Branch (ABP-255).

(3) Contracting Officer Review. All inter- and intra-agency agreements with the exception of Small Scale Reimbursable Agreements (SSRAs) in accordance with SSRA Guidance at https://my.faa.gov/content/dam/myfaa/org/staffoffices/afn/finance/documents/SSRA_Guidance.pdf require review by the office of Acquisition and Contracting (AAQ) prior to execution. AAQ should be involved at the early stages of the agreement development process to provide guidance on the selection of the appropriate agreement type, appropriate terms and conditions, and other business issues. For Volpe Intra-agency Agreements, the CO must complete the FAA Acquisition Strategy Determination for Proposed IAA with Volpe located in Procurement Templates.

(4) Legal Review. All agreements with the exception of Small Scale Reimbursable Agreements (SSRAs) in accordance with SSRA Guidance at the link cited above require legal review prior to execution. Ideally, legal counsel should be involved at the early stages

of the award process to assist with selection of the appropriate legal instrument, drafting appropriate terms and conditions, and other legal issues. AGC-7 in consultation with AGC-500 is responsible for providing legal review of all international government to government agreements and agreements with international quasi-governmental entities. In the Europe, Africa and Middle East (EAME) Region, AEU-7 provides legal review for agreements with foreign governments and quasi-governmental entities. AGC-500 and regional counsel are responsible for providing legal review on all other agreements and will consult with AGC-7 on any agreements that may have foreign policy implications. Franchise agreements require ABP-255 review prior to legal review.

(5) *Chief Information Officer Approval.* Agreements for information technology and/or service resources valued at \$250,000 or more must be approved by the Chief Information Officer (CIO) as required by T3.2.1.A.3.a(3).

(6) *Chief Financial Officer Approval.* Agreements valued at \$10 Million or more must be approved by the Chief Financial Officer (CFO) as required by AMS Guidance T3.2.1.4.A.1.a. The package submitted for CFO approval must include a rational basis as described in paragraph (e), Rational Basis, above as part of the business case. If applicable, the package must also include a best interest determination as described under T3.8.1A.2.e (1) (c) (i) below.

(7) *Administrator Review.* The Administrator's review is required when:

(a) ~~The total~~ For any non-AIP grants, cooperative agreements, or other transaction agreements with a cumulative value equals or exceeds \$10 million; or more. (See also T3.1.4.Delegation Authority); or

(b) The total cumulative value is less than \$10 million for any non-AIP grants, cooperative agreements, or other transaction, but the following conditions are present:

(i) The transaction is the subject of one or more congressional inquiries; or

(ii) The transaction is described in a statute, committee report, or agency budget; and

(iii) Either the schedule, performance, or estimated cost baseline will be significantly breached by 20% or more.

g. *Approval.* The final approval of an agreement must be performed by an individual with delegated authority from the FAE. For agreements in G-Invoicing, the FAE will delegate final approval authority to the individuals performing the role of Requesting GT&C final approver.

h. *Competition and Public Announcement.* Agreements described in this section do not require competition or public announcement.

2 Inter-agency and Intra-agency Agreements Revised 9/2022

- a. *Applicability.* This subsection applies to inter-agency and intra-agency procurements for services, supplies and real property. As such agreements are only between agencies and or departments within the Federal government, such agreements are comprised of only one party i.e. the Federal government. In other words, the parties to the agreement are not legally distinguishable. Therefore, these agreements being comprised of only one party, cannot be and are not binding contracts even in instances where an agreement is intended to bind the agencies. This section does not apply to orders placed under the General Service Administration's Federal Supply Schedules contracts, which are covered by AMS Policy 3.8.3 and AMS Guidance T3.8.3 "Federal Supply Schedules".
- b. *Definitions.* The following descriptions are applicable to this section:
 - (1) *Assisted Acquisition.* Assisted acquisition is a type of inter-agency acquisition where a servicing agency performs acquisition activities on a requesting agency's behalf, such as awarding and administering a contract, task order, or delivery order. Assisted acquisition is a subset of inter-agency agreements entered into for the primary purpose of obtaining services or products from contractors. Agreements for Assisted Acquisition are also referred to as Acquisition Assistance IAAs.
 - (2) *Inter-agency agreements.* Inter-agency agreements are written agreements between FAA and another Federal agency (as defined in Section 551(a) of Title 5 of the United States Code) where FAA agrees to receive supplies or services from the other agency, and FAA funds are obligated. Inter-agency agreements under which FAA purchases services, supplies, or facilities through another Federal agency's contract is an inter-agency procurement, and must follow AMS Guidance T3.8.1.A.2. Inter-agency reimbursable agreements are a type of inter-agency agreement under which the FAA provides goods and/or services to another Federal entity and the costs are paid for by another Federal entity. Inter-agency reimbursable agreements with goods and/or services provided by FAA Franchise servicing organizations are referred to as Inter-agency Franchise reimbursable agreements with others referred to as Inter-agency Non-Franchise reimbursable agreements.
 - (3) *Intra-agency agreements.* Intra-agency agreements are written agreements between FAA organizations or between the FAA and the Office of the Secretary of Transportation (OST) or another DOT operating administration. The FAA may use an intra-agency agreement to provide services or supplies to, or receive services or supplies from or

through OST or another DOT operating administration or between FAA organizations. If the FAA is the servicing agency, the agreement is an intra-agency reimbursable agreement as described under (5) below. Intra-agency reimbursable agreements are a type of agreement that is a relationship under which the FAA provides goods and/or services to OST or another DOT operating administration and the costs are paid by OST or another DOT operating administration. Intra-agency reimbursable agreements with goods and/or services provided by FAA Franchise organizations are referred to as Intra-agency Franchise reimbursable agreements with others referred to as Intra-agency Non-Franchise reimbursable agreements.

- (4) *Requesting Agency.* The Requesting Agency is an agency (or major organizational unit within an agency) that requests goods or services from another agency or unit through an agreement.
- (5) *Servicing Agency.* The Servicing Agency is an agency (or major organizational unit within an agency) that provides goods or services with agency resources or contracts for the service on behalf of the requesting agency or unit under the terms and conditions of an agreement.

c. Intra-agency and Inter-agency Agreement Forms

- (1) *Forms 7600A and B.* Forms 7600A and B (Treasury IAA Forms) are the standard Treasury IAA forms comprised of two sections, the General Terms and Conditions (GT&C) Section and Order Requirements and Funding Information (Order) Section. They are the standard forms to be used for inter-agency and intra-agency agreements that are not subject to G-Invoicing. The FS Form 7600A and FS Form 7600B are located in Procurement Templates.
 - (a) GT&C 7600A Form sets the relationship between the trading partners. It identifies the agencies entering into the agreement, the authority permitting the agreement, and the agreement action, period, and type. Each IAA must include only one GT&C. This subsection identifies the GT&C that will govern the relationship between the requesting agency and servicing agency, including roles and responsibilities for both trading partners to ensure effective management of the IAA. A GT&C can be used in place of a memorandum of understanding (MOU). No fiscal obligations are created through the execution of the GT&C; therefore, no services may be performed and/or no goods may be delivered in the absence of an appropriate obligating document, such as the Order 7600 B Form.

- (b) Order 7600B Form is the funding section that creates a fiscal obligation when the requesting agency demonstrates a bona fide need and provides the necessary product(s)/service(s) requirements; funding information is provided for both trading partners; and all required points of contact sign to authorize the Order. The Order identifies the specific requesting agency requirements for the expected delivery of products and/or services by the servicing agency. This section identifies the roles and responsibilities for both trading partners to ensure effective management of the Order and use of the related funds. An IAA must contain one GT&C and at least one Order, but may contain many Orders to one GT&C. A copy of the GT&C must be kept with the Orders that it supports.
- (2) *G-Invoicing*. G-Invoicing is a web-based application created to efficiently manage inter-agency and intra-agency buy/sell transactions between two federal agencies, from the agreement of the General Terms & Conditions (GT&Cs) to funds being settled within the Intragovernmental Payment and Collection (IPAC) System.
- (3) *Memorandum of Agreement (MOA) / Memorandum of Understanding (MOU)*.
MOU/MOAs are agreements between agencies or bureaus that do not involve payment or transfer of funding. If the agreement involves funding, an inter-agency or intra-agency must be executed using G-invoicing or Forms 7600A and B if the agency is not capable of G-invoicing.
- d. *Requirements for Agreements with Federal organizations*. All inter-agency and intra-agency agreements (except as noted below), in addition to the requirements listed above in T3.8.1.A.1.d, must include (the funding provisions do not apply if no funding is being transferred from one agency to another):
 - (1) The common agreement number and the funding source;
 - (2) The Treasury Account Symbol (TAS), or appropriation code, for both parties;
 - (3) The Business Event Type Code (BETC) for both parties;
 - (4) The effective date and duration of the agreement, to include the expiration of the funding source;
 - (5) The roles and responsibilities of the respective parties, including specifics on tasks such as performance monitoring, inspection and acceptance, approval of invoice payments, and restoration and disposition of property;
 - (6) The method and frequency of performance (revenue and expenses) reporting;

- (7) The amount and method of payment;
- (8) The Business Partner Network (BPN) number for both parties (which is equivalent to the Unique Entity Identifier (UEI) for civilian agencies and the Department of Defense Activity Addressing Code (DoDAAC) for Defense agencies);
- (9) If applicable, provisions for advance payments and method of liquidating such advance;
- (10) The parties' right to modify, cancel, or terminate the agreement;
- (11) A dispute resolution provision specifying that disputes must be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 5 (Overall Intra-governmental Transactions (IGT) Processes and General Information);
- (12) A cancellation provision specifying that if a buyer, or requesting agency, cancels the order, the seller, or providing agency, is authorized to collect costs incurred before cancellation of the order plus any termination costs; and
- (13) Point of contact information for CO, Contracting Officer's Representative (COR), and/or Delegated Official and accounting office. If the agreement is under G-Invoicing, the Delegated Approving Official must be indicated.
- (14) All agreements should be identified as severable or non-severable.

e. *Special Inter-agency and Intra-agency Considerations*

(1) *Inter-agency Agreements.*

- (a) *File Documentation.* Delegated Approving Officials entering into an inter-agency agreement should use the Inter-agency Agreement File Checklist in the FAST Procurement Checklists when documenting the agreement file.
- (b) *Review and Approval.* For review and approval of inter-agency agreements, please refer to T3.8.A.1.f, *Coordination Requirements*.
- (c) *Requirements for FAA as a Requesting Agency.*

- (i) *Best Interest Determination.* Each inter-agency agreement in which

FAA is the requesting agency must be supported by a written best interest determination signed by the director of the program office, or his/her designee. The Delegated Approving Official, acting within the warrant authority commensurate with the total estimated dollar value of the requirement, must review and approve the determination. If the procurement is valued at \$10 million or more and requires CFO review and approval under AMS Guidance T3.2.1.4, the best interest determination must be done as part of the business case included in the CFO review package. The best interest determination must address the following elements:

(A) *Suitability*. Explain how use of the servicing agency's contract vehicle is likely to result in a quality outcome that meets FAA's requirements and schedule, taking into account planning considerations described in AMS Policy 3.2.1 "Procurement Planning." For procurements valued at \$10 million or more, the determination must include information on the market analysis conducted.

(B) *Value*. Explain how use of another Federal agency's contract vehicle is the most efficient and cost-effective means of procuring the services, supplies, or real property, as opposed to using a current FAA contract vehicle or placing a new contract directly with a vendor. Any servicing agency fees should be taken into account in assessing value.

(C) *Expertise*. Explain how the procurement team, including both servicing agency contracting and program personnel, have the appropriate time, training, and expertise to effectively place and administer the contract work. (The procurement team would consist of FAA personnel for a direct procurement or the Servicing Agency personnel possibly working in conjunction with FAA personnel for an assisted acquisition).

(1) *Direct Procurement*. For a direct procurement (those in which FAA places an order directly with the contractor on another Federal agency's contract), the procurement team would consist of FAA personnel.

(2) *Assisted Procurement*. For an assisted acquisition (those in which the servicing agency, in addition to agreeing to allow FAA to use its contract(s), provides contracting support- such as conducting a task order competition), the procurement team would consist of servicing agency personnel, possibly working in conjunction with FAA personnel.

(ii) *OMB Circular A-76*. When the FAA is the requesting agency, requiring the servicing agency perform a commercial activity, the CO should conduct a cost comparison under OMB Circular A-76.

(iii) *Procurement Laws and Directives*. When the FAA is the requesting agency, utilizing another Federal agency contract or contracting services, the FAA is subject to the procurement laws applicable to that agency.

(iv) *Additional Authority under the Economy Act*. When the FAA is the requesting agency seeking to obtain supplies or services through another agency's prime contract and making advance payments, the Economy Act, 31 U.S.C 1535 may be cited as additional authority. Use of the Economy Act requires a determination and finding.

(v) *Templates*. When the FAA is the requesting agency, the servicing agency's template or form may be used.

(vi) *Unsolicited Proposals*. When the FAA is the requesting agency, the FAA may accept an unsolicited proposal in conjunction with inter-agency procurement procedures. Unsolicited proposals must be considered and processed in accordance with AMS Policy 3.2.2.6 and AMS Guidance T3.2.2.6 "Unsolicited Proposals." If an inter-agency procurement is used instead of a single source action, the best interest determination would replace the single source justification required under T3.2.2.6.A.6.b.2.b.

(vii) *Administration*. The Delegated Approving Official administering an agreement for an inter-agency procurement must review the terms and conditions agreed to by the parties at least annually for agreements that exceed one year. The review should involve the CO, the program office, and other technical and legal experts as necessary. The review should consist of a reexamination of the agreement, as supported by the best interest determination, in order to assess whether the agreement is meeting the needs of FAA. If the agreement is not meeting FAA's needs, the review team should discuss these issues with the other party and amend or terminate the agreement as appropriate and as allowed by the terms of the agreement. The annual assessment must be signed by the FAA CO and the reviewing official of the other party and documented in the agreement file.

(d) *Requirements for FAA as a Servicing Agency*.

(i) *Procurement Laws and Directives*. When the FAA provides services, supplies, or facilities to another Federal agency, the FAA is essentially a contractor and subject to the terms and conditions of the requesting agency. Unless authorized by statute or regulation, other Federal agencies

may not conduct acquisitions using the FAA's exemptions from acquisition laws.

(ii) *Inter-agency Reimbursable Agreements.* In addition to complying with T3.8.1.A, the non-franchise servicing organization must comply with the FAA Financial Manual, Vol 6 Ch 6.16 Reimbursable Agreements and the Reimbursable Agreement Standard Operating Procedure (SOP). For additional information, please contact the Reimbursable & Special Project Division (AFM-700). For Franchise reimbursable agreements, contact ABP-255.

(iii) *Templates.* When possible, the FAA should use FAA-approved templates. If not possible, FAA should ensure that the other (sponsor) Federal agency's agreement addresses the content required by this subsection. For non-franchise reimbursable agreements, templates located at https://my.faa.gov/org/staffoffices/afn/finance/sop/reimbursable_agreements/ra_templates.html must be used.

(e) *Joint Activities with Department of Defense (DOD).*

(i) DOD has the same exemptions from acquisition laws as are waived by the Administrator in the AMS when:

(A) The FAA and DOD are engaged in joint actions;

(B) DOD's contribution to the total cost of the activity is significant (more than 10 percent); and

(C) The purpose of the acquisition is to improve or replenish the national air traffic system (NAS). Joint actions include situations where both agencies share the same mission need and engage in joint activities to plan and implement the solution.

(ii) When the three criteria of (i) above are met, either FAA or DOD may conduct the acquisition using the policies of the AMS.

(2) *Intra-agency Agreements.*

Intra-agency Reimbursable Agreements. In addition to complying with T3.8.1.A, the non-franchise servicing organization must comply with the FAA Financial Manual, Vol 4 Ch 6.16 Reimbursable Agreements and the Reimbursable Agreement Standard Operating Procedure (SOP). For additional information, please contact the Reimbursable & Special Project Division (AFM-700). For Franchise reimbursable agreements, contact ABP-255.

(3) *Franchise Fund Inter/Intra-Agency Agreements Annual Funding/Agreement Closeout.*

- (a) All agreements should be reviewed prior to the expiration date of the agreement for deobligation of customer funds or close out processing.
- (b) Funding Agreements should be closed with the Franchise Accounting Branch within 60 days of completion of requirements and final billing.
- (c) When a refund to the customer is required and the customer does not respond to servicing organization queries within 60 days, the Franchise Accounting Branch will notify the customer that the agreement will be closed if a response is not received within 30 days.

f. *Funding.*

(1) *General.* Funds must be obligated to an agreement within the period of their availability consistent with the purposes of the appropriation. Additionally, absent express statutory language to the contrary, when FAA funds are obligated under an agreement with a servicing agency, the obligation maintains the same impact and restrictions when it is transferred to the servicing agency. For example, funds from the FAA's Operations, RE&D and F&E accounts may be used only for the purposes of the appropriation and do not lose their character once transferred to the servicing agency. Likewise, when FAA is the servicing agency, an obligation against an appropriation of a requesting agency maintains the same impact and restrictions as the appropriation of origin.

(2) *Economy Act.* Where the Economy Act is cited, funds must be obligated by the servicing agency **prior to expiration**, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to the funds expiring. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated by the servicing agency must be returned to the requesting agency prior to their expiration date.

(3) *Military Interdepartmental Purchase Request (MIPR).* The DOD uses MIPRs as the primary document to order goods or services from the FAA. The MIPR includes a description of the work or services DOD is requesting from the FAA, the unit price, the total price, and a fund cite. The FAA CO or other FAA official designated by their Directorate may accept the MIPR on behalf of the FAA. The person authorized to accept the MIPR must ensure the MIPR contains a clear statement of requirements before accepting the MIPR on behalf of the FAA. The DOD may use MIPR (DD Form 448) and Acceptance of MIPR (DD 448-2) to order goods from FAA. The Acceptance of MIPR Form specifies whether the identified work will be provided through reimbursement or by the direct citation of funds or a combination of both. Where FAA agrees to an MIPR based on reimbursement pursuant to the Economy Act, then the rules in subparagraph f.(2) above apply. If FAA accepts the funds on a direct cite basis, DOD will not record the funds as obligated until FAA provides DOD with a contract or

other obligating document that cites the funds.

(4) *Other Situations*. Where the Economy Act is not cited as authority for FAA, funds are obligated at the time FAA signs the agreement for non-Federal agreements and the sponsor's appropriation is treated as the same as if it were the FAA's for Federal agreements once the funding document is accepted.

(5) *Disposition of Funds Received*. Funds received under an Agreement shall be credited to the appropriation from which the expenses were incurred, unless otherwise required by one of the specific program authorities cited in Paragraph D, Appendix Attachment 1, Parallel Authorities, or current and prior appropriation acts.

g. *Implementation of G-Invoicing*.

(1) G-Invoicing is the mandated Government-wide solution for Intra-Governmental Transactions (IGT). The following types of agreements for goods/services delivered beginning on or after October 1, 2022 must be processed via G-Invoicing.

(a) Intra-agency agreements; and

(b) Inter-agency agreements.

For agreements for goods/services in place as of October 1, 2022, additional obligations must be processed via DELPHI for G-Invoicing compliance.

(2) Both parties to the agreement must be using G-Invoicing in order for it to be used for the above types of agreements.

(3) For those agreements subject to G-Invoicing, applicable AMS Guidance under T3.8.1.A.1 *General Considerations* and any applicable guidance under this section must be followed prior to entry into G-Invoicing for the creation of a General Terms and Conditions (GT & C) as specified in the SOP. For additional information, please refer to AFM-220 at 9-FAA-G-Invoicing-Support.

3 Other Transaction Agreements Revised 9/2022

- a. *Applicability*. This subsection provides an overview of Other Transaction Agreements. It does not provide complete information (for accessing complete information, see paragraph (d) "*Other Transaction Guide*" below).
- b. *General*. "Other Transaction Agreements" (OTAs), also known as "Other Transactions" (OTs) are instruments that are distinct from standard procurement contracts, grants, or cooperative

agreements as they are not subject to AMS policy and guidance, except for when the contrary is explicitly stated. OTAs are typically an agreement between FAA and a non-Federal entity (either foreign or domestic) where FAA's purpose is to obtain a direct benefit that advances the agency's mission while also assisting the general public.

Other transaction agreements are distinct from procurement contracts, grants, and cooperative agreements as they are not generally subject to AMS policy and regulations. OTAs are subject to AMS requirements only when explicitly stated as so by the Other Transaction Guide. In addition, the FAA's Office of Dispute Resolution for Acquisitions (ODRA) does not generally have jurisdiction over OTAs.

OTAs are subject to fewer restrictions than procurement contracts. To maintain the flexibilities accorded to OTAs, acquisition personnel should be aware of the differences between OTAs and procurement contracts, and work to ensure that OTAs do not become procurement-like. Lack of clarity along these lines can create legal uncertainty and, in turn, legal risk. At the same time, OTAs must be awarded in a manner that ensures effective stewardship of taxpayer dollars and complies with other applicable federal laws.

- c. *Other Transaction Agreement Forms.* OTAs with private entities and public authorities, other than Federal agencies, may take the form of a reimbursable agreement, memorandum of understanding or memorandum of agreement. A memorandum of understanding is not legally binding on the Government, while a memorandum of agreement creates a legally binding commitment.
 - (1) Other Transaction - Memorandum of Agreement (MOA). Where the FAA intends to create a legally binding commitment with a state, municipality or private entity through an "Other Transaction," a Memorandum of Agreement should be executed by the parties. When executing an MOA, the Other Transaction - MOA with State, Municipality or Private Entity Template located in Procurement Templates must be used.
 - (2) Other Transaction - Memorandum of Understanding (MOU). A Memorandum of Understanding is an agreement to agree and is not legally binding on either party. MOUs are appropriate where the parties seek only to memorialize policies and procedures of mutual concern, or describe other relationships that are not intended to create legally binding obligations. When executing an MOU, the Sample Other Transaction - Memorandum of Understanding (MOU) template located in Procurement Templates must be used.
 - (3) Other Transaction Reimbursable Agreement – based on the templates as referenced in the Reimbursable Agreement SOP referenced above.

d. *Other Transaction Guide.* The "[Other Transaction Guide](#)" (OT Guide) is FAA's primary authority

for OTAs. Located on FAST, the OT Guide should be referred to for complete information pertaining to such agreements.

4 Cooperative Agreements Revised 9/2022

a. Applicability.

(1) This subsection applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106(l) and (m). Per 49 U.S.C. 106(l)(6) and 106(m)), Congress provided the FAA with specific authority to "enter into and perform ...cooperative agreements...as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate." By its express terms, the statute applies to all activities of the agency and is not limited to research activities, or to nonprofit entities (See for example, 49 U.S.C 44512).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 68, the provisions of FAA Order 9550.7A **do not** apply to cooperative agreements issued under the authority of 49 U.S.C. 106(l) and (m).

(3) *Grants*. Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

b. Definitions.

(1) "Cooperative Agreements" are legal instruments used when the principal purpose of a relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) "Grants" are similar to cooperative agreements except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

c. *Appropriations.*

(1) *General Principles.*

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against individuals with disabilities in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met:

(i) The primary purpose is to benefit the public rather than FAA;

(ii) there is substantial FAA involvement; and

(iii) the funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) Guidance.* Several OMB Circulars imposed restrictions on projects funded with Federal funds. These Circulars A-21, A-87, A-102, A-110, and A-122 have been superseded by OMB Guidance “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniformadministrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> (“OMB Uniform Guidance”). In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow this OMB Uniform Guidance to the extent this OMB Uniform Guidance is consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate".

d. *Format.* When creating a cooperative agreement, Section 106 Cooperative Agreements, or Section 106 Cooperative Agreement Template located in Procurement Templates should be used.

e. *Cooperative Agreement-specific Required Content.*

(1) In addition to the agreement contents described above in T3.8.1.A.1.d, all cooperative agreements should include the following:

- (a) A description of the intended beneficiary;
- (b) A description of the level of FAA involvement;
- (c) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share;
- (d) Recipient standards - cost accounting, financial management systems procurement, technical capability, property management and management organization, and technical capability;
- (e) Allowable Costs— describe any unallowable costs, e.g. profit and fee;
- (f) FAA's right to audit for a stated period of time;
- (g) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (See subparagraph 2.(d), *Appropriations*, above);
- (h) Small business opportunities;
- (i) Deliverables: may receive data, reports; may discuss associated data rights;
- (j) Dispute resolution;
- (k) Debarment/suspension— cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier); appropriate flow through provisions should be included in the agreement to prohibit sub-awards to suspended or debarred parties; and
- (l) Assignment— cooperative agreements may not be assigned to another recipient without the express, written consent of the FAA prior to the assignment.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however, competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

- (1) Technical merit and program value.
- (2) Cost/contribution of the parties.
- (3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. Cooperative Agreement-specific Rational Basis. As stated in T3.8.1.A.4.e, all agreements must be supported by a written rational basis. In addition to the requirements cited above in T3.8.1.A.4.e the rational basis given for the use of a cooperative agreement must specifically describe the following:

- (1) The purpose of the cooperative agreement;
- (2) The expected benefit to the recipient and the general public;
- (3) FAA's substantial involvement in performance of the activity; and
- (4) The method for selection of the recipient(s).

h. Administration. Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAE, who is authorized to redelegate this authority, as appropriate.

5 International Agreements Revised 9/2022

a. Applicability. This subsection applies to international agreements made between FAA and foreign entities, that is, foreign governments and foreign quasi-governmental organizations. These agreements are most commonly used to establish a technical assistance or research and development relationship between FAA and the foreign entity. In such instances, FAA's interest is in encouraging aviation safety outside the United States pursuant to 49 U.S.C. 40113(e).

b. Definition. As used throughout this section, T3.8.1, an "international agreement" is a legally binding, contractual agreement between FAA and a foreign government or other quasi-governmental organization. It does not refer to understandings or commitments agreed to by multiple countries such as treaties.

c. Developing and Processing.

(1) *Foreign Governments.* When a foreign government is a party to the transaction, the agreement is a government-to-government agreement governed by international law. FAA must obtain Department of State (DOS) clearance on the negotiation and final terms of such agreements.

(2) *Foreign Quasi-governmental Organizations.* In negotiating agreements with foreign quasi-governmental entities including foreign private civil aviation authorities, FAA consults with the Department of State (DOS) on foreign policy issues that may arise under such

agreements.

(3) The program office lead or CO should coordinate with the Office of International Aviation (API), which has organizational responsibility for coordinating with the DOS and the responsible U.S. embassy, and for transmitting the agreement to the foreign entity for signature.

(4) DOS clearance is not required for international agreements with private contractors; however, the program office lead should consult API when appropriate.

(5) *Approval of FAA Administrator.* The FAA Administrator or designee must approve equipment purchases by a foreign government or quasi-governmental organization under any FAA prime contract.

B Clauses

[view contract clauses](#)

C Procurement Forms Revised 9/2021

Document Name

D Procurement Samples Revised 9/2021

Document Name

E Procurement Templates Revised 9/2022

Document Name
FAA Acquisition Strategy for Proposed IAA with Volpe
Intellectual Property - Section 106 Cooperative Agreement
Interagency Agreement Template

Intra-agency Agreement Form 7600a

Intra-agency Agreement Form 7600b

Other Transaction - Memorandum of Understanding (MOU)

Other Transaction - MOA with State, Municipality or Private Entity Template

Section 106 Cooperative Agreement Template

Nomination for Delegation of Limited Authority

F Procurement Tools and Resources Added 9/2021

Document Name
F AE Memo Intra-Agency Agreements (IAAs) with Volpe

G Appendix Revised 9/2021

1 Attachment 1 - Parallel Authorities

49 U.S.C. 40108 - authorizes the FAA to establish training schools for FAA officers and employees. Authorizes attendance of officers and employees of other Federal entities, governments of foreign countries, and individuals from the aeronautics industry. Authorizes the Administrator to "*require payment or transfer of amounts or other consideration to offset the additional cost*" of any of "*those officers, employees, or individuals.*" **Amounts received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.**

49 U.S.C. 40113(e) - authorizes the Administrator to provide safety-related training and operational services to foreign aviation authorities with or without reimbursement. **Funds received shall be credited to the appropriation from which the expenses were incurred.**

49 U.S.C. 44502 (a)(2) - authorizes the Administrator to make an agreement with an airport owner or sponsor (includes a private owner of a public use airport) so that the owner or sponsor will provide site preparation work associated with acquiring, establishing, or improving an air navigation facility and be paid or reimbursed from the appropriated amounts (under section 48101(a)).

49 U.S.C. 44502(d) - authorizes the FAA to provide, by regulation, assistance, and sale of fuel, oil, equipment and supplies to an aircraft in an emergency. **The cost of the assistance may be credited to the appropriation from which the cost was paid.**

49 U.S.C. 47301 - 47305 - provides authority to acquire, establish and construct airport property and airway property (except meteorological facilities) in foreign territory, authority to transfer property, train foreign citizens, accept payment from a government of a foreign country or international organization for facilities or services provided the government or organization, and **authority to credit funds so received to current appropriations.**

49 U.S.C. 44903(c) - provides authority to the Administrator to authorize an airport operator to use on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel.

49 U.S.C. 44505(d) - authorizes cooperative agreements on a cost-shared basis for research, engineering and development with Federal and non-Federal entities.

49 U.S.C. 44912 - authorizes grants and cooperative agreements for research technologies to counter terrorist acts against civil aviation.

49 U.S.C. 44913 - authorizes grants under the Explosive Detection K-9 Team Training Program.

49 U.S.C. 44935(c)(2) - authorizes reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs.

49 U.S.C. 47104 - authorizes project grants for airport development from the Airport and Airway Trust Fund.

49 U.S.C. 47151 - authorizes the Administrator to give an interest in surplus airport property to a State, political subdivision of a State, or tax supported organization. Such surplus property may be used by the U.S. Government without charge if the President declares a national emergency.